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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---------------------------------------------------------------------------------------------------------------|-------------|----------------------|-----------------------------|------------------|
| 10/822,918 | 04/13/2004 | Frank Frederick | 23770-RA | 3578 |
| 30184 | 7590 | 01/17/2006 | | |
| MYERS & KAPLAN, INTELLECTUAL PROPERTY LAW, L.L.C. 1899 POWERS FERRY ROAD SUITE 310 ATLANTA, GA 30339 | | | EXAMINER EDELL, JOSEPH F | |
| | | | ART UNIT 3636 | PAPER NUMBER |

DATE MAILED: 01/17/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|-------------------------------|----------------------------------|--|
| Office Action Summary | Application No. 10/822,918 | Applicant(s) FREDERICK, FRANK | |
| | Examiner Joseph F. Edell | Art Unit 3636 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) 20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-19 and 21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 April 2004 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of claims 1-19 and 21, drawn to Group I, in the reply filed on 14 November 2005 is acknowledged. The traversal is on the ground(s) that the restriction is improper because the seating apparatus of Group I could not be utilized by a materially different method. This is not found persuasive because the method of Group II requires that the hunting seat be placed in contact with the ground. This limitation teaches away from the utilization of the seating apparatus of Group I in an elevated tower, i.e. a deer stand, commonly used by hunters. Also, the method of Group II requires the user to sit on the seating apparatus. This limitation teaches away from the utilization of the seating apparatus of Group I as a kneeling support commonly used by hunters. Therefore, the inventions are distinct and the restriction is proper.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

3. Claims 1-3, 5-8, 11, 17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,773,574 to Burgard.

Burgard discloses a seating apparatus that includes all the limitations recited in claims 1-3, 5-8, 11, 17, and 18. Burgard shows a seating apparatus having a backplane 12,62 (see Fig. 2), a seat 32 carried by the backplane, at least two straps 54 carried by the backplane, a plurality of side storage compartments 72,74 (see Fig. 1) of a generally cylindrical shape, a lower storage compartment 40 closably secured via a zipper 78, and a movable support kickstand (lower end of frame 10) wherein the backplane has a first end, a middle section, and a second end with at least two legs (see Fig. 2).

4. Claims 1-3, 5-11, 13, and 17-19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,289,958 to Jay.

Jay discloses a seating apparatus that includes all the limitations recited in claims 1-3, 5-11, 13, and 17-19. Jay shows a seating apparatus having a backplane 12,26 (Fig. 4), a seat 50 (Fig. 6) carried by the backplane, at least two straps 40,42 (Fig. 7) carried by the backplane, a plurality of side storage compartments (see Fig. 7) of a generally cylindrical shape, a lower storage compartment 70 (see Fig. 8) closably secured via a zipper, means for carrying a sleeping bag (see Fig. 10) with bungee cords 92, a movable support kickstand 26 (Fig. 6), a colored cover sheet 90 (Fig. 8) carried by a top portion of the backplane wherein the backplane has a first end, a middle section, and a second end with at least two legs, and the cover sheet can be deployed to cover upper and middle portions of the backplane and seat.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jay in view of U.S. Patent No. 6,196,437 to Smith III.

Jay discloses a seating apparatus that is basically the same as that recited in claim 4 except that the side storage compartment lacks a drawstring, as recited in the claim. Smith discloses a seating apparatus similar to that of Jay wherein the storage compartment 6 (see Fig. 1) is closed via a drawstring 7. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the Jay such that the side storage compartment is closed via a drawstring, such as the seating apparatus disclosed in Smith. One would have been motivated to make such a modification in view of the suggestion in Smith that hook and loop fasteners, zippers, and drawstrings are functional equivalents.

7. Claims 12, 14-16, and 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jay.

Jay discloses a seating apparatus that is basically the same as that recited in claims 12, 14-16, and 21 except that the colors of the covering sheet are not specified, as recited in the claims. Although the coloring of the covering sheet is not specifically recited, modifying the covering sheet of Jay would have been obvious at the time of

Applicant's invention because the use of coloring and/or patterns discovered by routine experimentation is ordinarily within the skill of the art. Further, it would have been an obvious matter of design choice to modify the covering sheet of Jay to have any suitable color appropriate for normal use of the seating apparatus in an outdoor environment and it appears that the covering sheet would perform equally well with any well known coloring used in the art.

Response to Arguments

8. Applicant's arguments filed 14 November 2005 have been fully considered but they are not persuasive. With respect to claim 1, Applicant argues that the both Burgard and Jay fail to disclose a backplane that is a planar structure. However, Burgard teaches a rectangular frame 12 having a backrest 62 mounted thereto wherein the structure of frame 12 and backrest 62 meet the limitation of a backplane. Also, Jay teaches a first frame portion 12 and a forward leg member 26 mounted thereto wherein structure of the frame portion 12 and the leg member 26 meet the limitation of a backplane. *Merriam-Webster's Collegiate Dictionary, Tenth Edition* defines a back as the side or surface opposite the front or face; the rear part. Also, *Merriam-Webster's Collegiate Dictionary, Tenth Edition* defines a plane as a flat or level surface. Examiner reasonably interprets a backplane as a flat surface opposite the front or face of the seating apparatus. Therefore, Burgard teaches the limitation of a backplane because the frame and backrest combination form a flat surface that is opposite the front of the seating apparatus, and Jay teaches the limitation of a backplane because the frame

portion and leg member combination form a flat surface that is opposite the front of the seating apparatus.

With respect to claim 5, Applicant argues that both Burgard and Jay fail to disclose a lower storage compartment carried beneath the seat. However, Burgard clearly shows a lower storage compartment 40 disposed beneath the seat 32. Also, Jay has a storage compartment 70 (see Fig. 8) attached to the canvas envelope 50 of the seat wherein the storage compartment is inherently below the seat when in the use position (see Fig. 6). Therefore, both Burgard and Jay teach a lower storage compartment carried beneath the seat.

With respect to claim 11, Applicant argues that Burgard fails to disclose a kickstand that is structurally and functionally equivalent to the kickstand of the instant application wherein the kickstand must be an independent movable single leg that provides a kinematically-efficient support. Also, Applicant argues that Jay fails to teach a kickstand that provides kinematically-efficient support. However, claim 11 merely requires that that seating apparatus includes a movable support kickstand, which does not require or imply that the kickstand be independently movable or provide a kinematically-efficient support. *Merriam-Webster's Collegiate Dictionary, Tenth Edition* defines a kickstand as a swiveling metal bar or rod for holding up a 2-wheeled vehicle (as a bicycle) while not in use. Because the instant application is not toward a 2-wheeled vehicle, Examiner reasonably interprets a kickstand as a swiveling metal bar or rod for holding up an object. Therefore, Burgard teaches the limitation of a kickstand because the lower end of frame 10 is a swiveling metal rod for holding up the seating

apparatus, and Jay teaches the limitation of a kickstand because the leg member 26 is a swivel metal rod for holding up the seating apparatus.

With respect to claim 13, Applicant argues that Jay fails to disclose a colored cover sheet because the cover sheet of the instant application provides a bright visual warning of a hunter's presence. Examiner reasonably interprets the limitation of a "colored cover sheet" to be a cover sheet being of any color in the visual spectrum. While Applicant may interpret the color of the cover sheet as being a bright visual warning, limitations from the specification are not read into the claims. Therefore, Jay teaches a colored cover sheet 90.

With respect to claim 18, Applicant argues that both Burgard and Jay fails to disclose a cylindrically-shaped side storage compartment. However, Figure 1 of Burgard clearly shows two side pockets 72,74 that are each a generally cylindrical shape. Also, Figure 7 of Jay clearly shows side compartments on side panels 62,64 that are each a generally cylindrical shape. Therefore, Burgard and Jay et al. teach a side compartment comprising a generally cylindrical shape.

With respect to claim 4, Applicant argues that Smith fails to teach a drawstring wherein the drawstring is a closure of a single peripheral edge by a single string tight. *Merriam-Webster's Collegiate Dictionary, Tenth Edition* defines a drawstring as a string, cord, or tape inserted into hems or casings or laced through eyelets for use in closing a bag or controlling fullness in garments or curtains. Examiner reasonably interprets a drawstring as a string, tape, or cord inserted into casings for use in closing the side storage compartment. Smith teaches a tie downs that are strings in the casing of the

compartment for closure. Therefore, Smith teaches that it would have been obvious to one of ordinary skill in the art at the time of the instant application to modify the side storage compartment of Jay is employ a drawstring for closure.

With respect to claims 12, 14-16 and 21, Applicant argues that it would not have been obvious to one of ordinary skill to modify the color of the cover sheet shown in Jay. Applicant asserts that *In re Vaeck* requires that the suggestion to make the claimed combination must be both found in the prior art and not be based on Applicant's disclosure. However, *In re Vaeck* specifies that the combination of references must both provide the suggestion and reasonable expectation of success. In this instance, the teachings of Jay are not being combined with the teachings of another reference. Therefore, the requirements of *In re Vaeck* are inapplicable herein. Next, Applicant asserts that *Ex parte Clapp* requires that the references must expressly or impliedly suggest the claimed invention. With respect to the teachings of Jay, Examiner contends that the teachings of Jay the suggestion to modify the color is implied because Jay specifies that the seating apparatus is used for camping wherein the use of distinguishing colors are well known in this field of endeavor. See *In re Kotzab*, 217 F.3d 1365, 1370, 55 USPQ2d 1313, 1317 (Fed. Cir. 2000). Moreover, Applicant has not demonstrated any criticality relating to the coloring of the cover sheet. Therefore, it is not inventive to discover the optimum coloring through routine experimentation that is ordinarily within the skill of the art. See *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). Therefore, it would have been obvious to modify the color of the cover sheet taught in Jay.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.


10. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph F. Edell whose telephone number is (571) 272-6858. The examiner can normally be reached on Mon.-Fri. 8:30am-5:00pm.


Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic

Business Center (EBC) at 866-217-9197 (toll-free).


JE
January 11, 2006


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